

		UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA
CENTRAL PLATTE NATURAL RESOURCES DISTRICT,)	CASE NO. _____
)	
Plaintiff,)	
)	Complaint for Declaratory and Injunctive Relief
v.)	
)	
UNITED STATES DEPARTMENT OF AGRICULTURE)	
)	
and)	
)	
FARM SERVICE AGENCY,)	
)	
Defendants.)	

INTRODUCTION

1. This action is brought pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 *et seq.*, for declaratory, injunctive and other appropriate relief, seeking the release of agency records requested by Plaintiff Central Platte Natural Resources District (“CPNRD”) from Defendant Department of Agriculture (“USDA”) through its Farm Service Agency (“FSA”).

2. Specifically, this case involves FSA’s unlawful denial of a request for the following information, in Geographic Information System (“GIS”) format in its native, useable electronic form, for farms in various Nebraska counties: (1) The farm number, (2) tract number, (3) owner and operator name and address, (4) number of acres and crop types “certified” by the

FSA, and (5) whether or not the lands were irrigated. Collectively, this information is referred to herein as the “GIS Data.”

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action and over the parties pursuant to 5 U.S.C. § 552(a)(4)(B), 28 U.S.C. § 1331 and 5 U.S.C. §§ 701-706.

4. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §1391(b)(2).

PARTIES

5. Plaintiff CPNRD is a political subdivision of the State of Nebraska, charged by its enabling legislation with managing natural resources and carrying out various programs for the conservation, protection, development, and management of the State’s natural resources. NEB. REV. STAT. § 2-3201.

6. Nebraska’s natural resources districts, including CPNRD, today serve all functions that were at one time performed by soil and water conservation districts, watershed conservancy districts, watershed districts, advisory watershed improvement boards, and watershed planning boards. *Id.* CPNRD manages natural resources, including ground water, in eleven Nebraska counties.

7. CPNRD’s statutory purposes require it to:

... develop and execute, through the exercise of powers and authorities granted by law, plans, facilities, works, and programs relating to (1) erosion prevention and control, (2) prevention of damages from flood water and sediment, (3) flood prevention and control, (4) soil conservation, (5) water supply for any beneficial uses, (6) development, management, utilization, and conservation of ground water and surface water, (7) pollution control, (8) solid waste disposal and sanitary drainage, (9) drainage improvement and channel rectification, (10) development and management of fish and wildlife habitat, (11) development and management of recreational and park facilities, and (12) forestry and range management.

NEB. REV. STAT. § 2-3229.

8. CPNRD is specifically authorized to “cooperate with or to enter into agreements with and, within the limits of appropriations available, to furnish financial or other aid to any cooperator, any agency, governmental or otherwise, or any owner or occupier of lands within the district for the carrying out of projects for benefit of the district as authorized by law, subject to such conditions as the board may deem necessary.” NEB. REV. STAT. § 2-3235.

9. CPNRD has entered into multiple agreements with various USDA agencies, including FSA, involving the provision of both technical and financial support directly to USDA and to operators participating in USDA programs. Among other things, CPNRD provided technical and financial support to help initiate and administer the very GIS program from which CPNRD seeks the GIS Data in this case. In fact, CPNRD is engaged in cooperative actions with USDA on every parcel of cultivated land within the NRD’s boundaries.

10. Defendant USDA is a Department of the Executive Branch of the United States Government. USDA is an agency within the meaning of 5 U.S.C. § 552(f). USDA is responsible for compliance with the laws of the United States and regulations promulgated thereunder, including the laws and regulations at issue in this case.

11. In denying CPNRD’s request, USDA has acted through Defendant FSA and its office located in the State of Nebraska. Defendant FSA also is an agency within the meaning of 5 U.S.C. § 552(f).

FACTS GIVING RISE TO THIS COMPLAINT

12. Under FOIA, “[e]ach agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.” 5 U.S.C. § 552(a)(3)(A).

13. An agency may deny a FOIA request only when the information sought is exempt from disclosure under FOIA. 5 U.S.C. § 552(d). *See also Multi Ag Media LLC v. Department of Agriculture*, 515 F.3d 1224, 1226 (D.C. Cir. 2008).

14. CPNRD initially requested the GIS Data on December 20, 2005.

15. By letter dated January 27, 2006, FSA denied CPNRD's initial FOIA request citing 5 U.S.C. § 552(b)(6) ("Exemption 6"), which exempts from disclosure personnel, medical, or similar records. CPNRD appealed that denial administratively on March 3, 2006.

16. On April 17, 2007 (over one year later), CPNRD's appeal was granted in part and denied in part. CPNRD was informed FSA would release the names and addresses, types of crops certified, and the farm number and tract number for landowners and farm operators who were currently receiving benefits in at least one FSA subsidy program. However, CPNRD's request for the number of acres planted and the irrigation practices used was again denied on the basis that such information fell with Exemption 6.

17. Pursuant to the 2007 appeal ruling, CPNRD obtained from FSA the limited records granted on appeal. However, this was provided in tabular format, and CPNRD was unable to glean any of the information it requested from the actual records provided. Consequently, CPNRD contacted FSA and requested that FSA release the information in GIS format, which would enable CPNRD to review and obtain beneficial and useful information from the records released. In June 2007, FSA informally denied CPNRD's request for the information in GIS format, but invited CPNRD to make a second formal FOIA request for the GIS Data.

18. Subsequently, the D.C. Circuit Court of Appeals issued its decision in *Multi Ag Medic, LLC v. Dep't of Agriculture, supra*. There, the Court ordered disclosure of information

similar to that sought by CPNRD despite the existence of a protectable privacy interest in the records requested. The Court of Appeals cited the countervailing public interest in the disclosure of GIS files due to the fact that USDA used the GIS Database to monitor program compliance. Therefore, the information from the GIS Database would enable the public to more easily determine whether the USDA is “catching cheaters and lawfully administering its subsidy and benefit programs.” *Id.* at 1232.

19. After the D.C. Circuit’s decision, by letter dated August 19, 2008 CPRND again sought the GIS Data that had been withheld by FSA.

20. On June 25, 2009 (nearly another year later), FSA again denied CPNRD’s request. However, this time, FSA denied the request based on FOIA “Exemption 3.” This exemption provides that matters are exempt from disclosure when “a statute requires that ... matters be withheld from the public in such a manner as to leave no discretion on the issue ... or establishes particular criteria for withholding or refers to particular types of matters to be withheld.” 5 U.S.C. § 552(b)(3).

21. In invoking Exemption 3, FSA cited Section 1619 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). The relevant provisions of the 2008 Farm Bill read as follows:

(b) LIMITATION ON DISCLOSURES.- ...

(2) PROHIBITION.-Except as provided in paragraph[] (3) ..., the Secretary, any officer or employee of the Department of Agriculture, or any contractor or cooperator of the Department, shall not disclose-

(A) information provided by an agricultural producer or owner of agricultural land concerning the agricultural operation, farming or conservation practices, or the land itself, in order to participate in programs of the Department; or

(B) geospatial information otherwise maintained by the Secretary about agricultural land or operations for which information described in subparagraph (A) is provided.

(3) AUTHORIZED DISCLOSURES.-

(A) LIMITED RELEASE OF INFORMATION.-... the Secretary may release or disclose the information to a person or Federal, State, local, or tribal agency working in cooperation with the Secretary in any Department program-

(i) when providing technical or financial assistance with respect to the agricultural operation, agricultural land, or farming or conservation practices; or ...

22. The sole basis on which FSA based its denial was FSA's assessment that CPNRD is not a cooperating entity as referenced in Section 1619(b)(3). This assessment is patently incorrect and ignores myriad cooperative efforts underway among CPNRD and various USDA agencies, including FSA.

23. On July 23, 2009, CPNRD timely appealed FSA's denial under the agency's FOIA regulations. CPNRD urged FSA to address the appeal within the time allotted under the FOIA regulations. 5 U.S.C. § 552(a)(6)(A)(ii). To date, neither Defendant USDA nor Defendant FSA has responded to CPNRD's appeal.

24. Plaintiff CPNRD has exhausted its applicable administrative remedies.

25. Defendants have wrongfully withheld the GIS Data from Plaintiff.

CAUSES OF ACTION

First Cause of Action:

Violation of the Freedom of Information Act

26. Plaintiff repeats and realleges the foregoing paragraphs.

27. FOIA requires the GIS Data to be released to CPNRD, unless Exemption 3 applies to preclude its release. FOIA Exemption 3 does not apply under the facts presented.

28. Defendants' failure to release the GIS Data violates FOIA, 5 U.S.C. § 552, and Defendants' own regulations promulgated thereunder.

Second Cause of Action:
Violation of the Administrative Procedure Act

29. Plaintiff repeats and realleges the foregoing paragraphs.

30. As evidenced by four years of evasive responses, feigned cooperation, shifting legal interpretations, and flagrant stonewalling, it is apparent that Defendants are simply attempting to frustrate CPNRD's efforts to obtain the GIS Data.

31. Defendants' failure to release the GIS Data constitutes agency action unlawfully withheld and unreasonably delayed, in violation of the APA. 5 U.S.C. § 706(1).

32. Alternatively, Defendants' failure to release the GIS Data is arbitrary, capricious, an abuse of discretion, not in accordance with law and without observance of procedure required by law, all in violation of the APA. 5 U.S.C. § 706(2)(a) and (d).

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays that this Court:

- A. Declare Defendants to be in violation of the FOIA and the APA;
- B. Include in the Court's Order a specific finding that the actions of the agency were so flagrant as to warrant referral to the Merit System Protection Board for investigation pursuant to 5 U.S.C. § 552(a)(4)(F);
- C. Order Defendants immediately to release the GIS Data;
- D. Award Plaintiff its costs and reasonable attorneys fees incurred in this action, including under 5 U.S.C §552(a)(4)(E); and
- E. Grant such other relief as the Court may deem just and proper.

Respectfully submitted this 18th day of September, 2009.

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